

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-6027

United States Court of Appeals FOR THE SECOND CIRCUIT

CAPITAL REGION CITIZENS COMMITTEE, THE RICHMONDVILLE PROPERTY OWNERS COMMITTEE, NEW YORK STATE COALITION FOR SAFE TRANSPORTATION - N. Y. STATE COST, TOWN OF ROTTERDAM, ST. FRANCIS COMMANDERY HALL ASSOCIATION, INC., a/k/a KNIGHTS OF ST. JOHN, JOHN W. KESEBERG, CHESTER and JANE SNYDER, JOHN K. and MARY E. ALDERSHOFF and GARRETT J. and DELLA M. ALDERSHOFF, WILLIAM F. and WILMA SCHULIZE, ARTHUR W. and JANICE SCOTT, ROBERT G. and MARY LOU SAWYER, and DANIEL T. and DORIS SEIF,

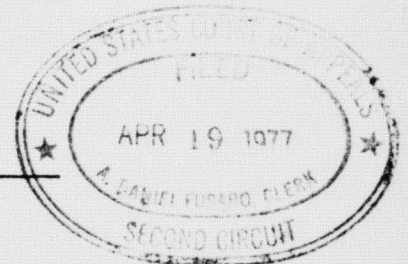
Plaintiffs-Appellants,

-against-

JOHN A. VOLPE, Secretary of Transportation of the United States; GERALD D. LOVE, Regional Federal Highway Administrator of the Bureau of Roads, United States Department of Transportation; ROBERT E. KIRBY, Division Engineer of the Bureau of Roads, Federal Highway Administration, United States Department of Transportation; THEODORE W. PARKER, Commissioner of the Department of Transportation of the State of New York; and CHARLES E. CARLSON, Regional Director, New York State Department of Transportation, Region 1, And each and every one of the foregoing individually as well as in his designated official capacity,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK



BRIEF OF PLAINTIFFS-APPELLANTS The Richmondville Property Owners Committee, et al.

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-against-

JOHN A. VOLPE, Secretary of Transportation of the United States; GERALD D. LOVE, Regional Federal Highway Administrator of the Bureau of Roads, United States Department of Transportation; ROBERT E. KIRBY, Division Engineer of the Bureau of Roads, Federal Highway Administration, United States Department of Transportation; THEODORE W. PARKER, Commissioner of the Department of Transportation of the State of New York; and CHARLES E. CARLSON, Regional Director, New York State Department of Transportation, Region 1, And each and every one of the foregoing individually as well as in his designated official capacity,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF OF PLAINTIFFS-APPELLANTS The Richmondville Property Owners Committee, et al.

Opinion Below

The opinion of the court below (HON. EDMUND PORT) is set forth in the Appendix at page A527.*

* References are thus to pages in the Appendix; in addition, where available, reference is made to page numbers as indexed to the Record on Appeal (Rec. on App.).

Jurisdiction

The order of the District Court was made on September 28, 1976, and filed on September 29, 1976 (A525). The statement under Rule 54(b), F.R.C.P., is set forth at page A547. Notice of appeal by plaintiffs-appellants The Richmondville Property Owners Committee, et al., was filed on November 29, 1976 (A550).

Issues Presented

1. Did the court below properly dispose of the issues and determine the action by summary judgment?
(Point I)
2. Did the court below comply with the requirements of the National Environmental Policy Act and Federal laws relating to hearings, protection of public park and recreation lands, and navigable waters? (Points II - VIII)
3. Is the project appropriately to be funded as a Federal-aid highway project in absence of compliance with requirements of Federal law? (Point IX)

Federal Rules of Civil Procedure

Rule 56 of the Federal Rules of Civil Procedure, in-
sofar as here applicable, provides in part as follows:

"Rule 56. Summary Judgment

* * *

"(c) Motion and Proceedings Thereon. * * * The
judgment sought shall be rendered forthwith if the
pleadings, depositions, answers to interrogatories, and
admissions on file, together with the affidavits, if any,
show that there is no genuine issue as to any material
fact and that the moving party is entitled to judgment
as a matter of law." * * *

* * *

Public Law 94-83

Public Law 94-83, here at issue, amended the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C., Section 4332, by amending Section 102(2) thereof by redesignating subparagraphs (D), (E), (F), (G), and (H) as subparagraphs (E), (F), (G), (H), and (I), respectively; and by adding immediately after subparagraph (C) a new subparagraph (D) which, insofar as here applicable provided in part as follows (Pub.L. 94-83, appr. Aug. 9, 1975; 42 U.S.C., Sec. 4332(D):

"(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

"(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

"(ii) the responsible Federal official furnishes guidance and participates in such preparation,

"(iii) the responsible Federal official independently evaluates such statement prior to its approval

and adoption * * *

* * *

"The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act * * * ."

Statement of the Case

This case involves initial appellate review of the planning and compliance with Federal law of a proposed Interstate Highway (I-88), known as the Susquehanna Expressway, being built by the State of New York between Binghamton and Schenectady. First proposed over a decade ago and approved as part of the Interstate System in 1968, the State has undertaken its construction with the assistance of Federal funds.

As part of this background, with reference to the issue of Federal as against State funding, the State of New York, through its Commissioner of Transportation Schuler, has taken the position that, in the event of an adverse conclusion to the litigation, the State of New York itself was prepared to complete the project, though perhaps in some revised form and schedule, without the assistance of Federal aid (Affid. of Schuler, Sept. 24, 1973, p. 6; Rec. on App., p. 147). In particular, and insofar as here applicable, the State has represented as follows (id., pp. 5-6):

"Lastly, it is to be noted that the project presently designated I-88 between Binghamton and Schenectady was included as a priority project in the State's 1968 Master Plan, prior to receiving the Interstate designation. In the 1972 Master Plan, it has similarly been identified as

a planned major intercity freeway facility * * * . The decision to include this expressway in the State's Master Plan was based upon numerous economic and other factors unrelated to the availability of Federal funds. While it is recognized that such funds might be delayed or, perhaps, withdrawn altogether in the event of an adverse conclusion to this litigation, the project itself is important enough to the State of New York to be completed, though perhaps in some revised form and schedule, even without Federal aid."

* * *

Important questions of compliance with Federal law, taken up under the points, relate to the question of continued Federal funding. A chronological review of the steps of litigation follows:

The Complaint

The Complaint, filed May 18, 1972, was based upon alleged violation of the National Environmental Policy Act of 1969, of the Clean Air Act, of Federal statutes protecting public park and recreation lands, requirements as to public hearings, statutes protecting navigable waters, including the Susquehanna River, and improper inclusion thereof in the Interstate Highway Sys-

tem (A5, A281, et seq.).

Other claims, relating to alleged violation of State law and on Federal and State constitutional grounds, have earlier been dismissed (A296-A297; see A22-A25, A285-A286). The question of the legality of construction of the highway now turns exclusively on questions of Federal law.

Earlier Motions for Summary Judgment

Certain motions for summary judgment in 1972 were made by the State and Federal defendants (State Motion for Summary Judgment, Sept. 25, 1972, Rec. on App., p. 68, et seq.; Federal Motion for Summary Judgment, Sept. 11, 1972, Rec. on App., p. 61, et seq.) These motions were, in the main, denied in the Memorandum-Decision and Order of the court below dated November 14, 1973 (A289, A297-A298, A302).

Subsequent Developments; State Construction During Pendency of Motions

On May 8, 1973, while the summary judgment motions above were still pending, it came to counsel's attention that the New York State Department of Transportation, while the matter was yet sub judice, was actually undertaking to build the highway (A242-A243, A254-255; see A256). This was in connection with an announced low bid of \$7,989,457 for construction

of approximately four miles thereof in the town of Sidney in Delaware County (A256). Upon counsel having been apprised of this, the following letter was sent to counsel for the New York State Department of Transportation and for the Federal defendants (A254-A255):

"It has come to my attention that the New York State Department of Transportation, while the above matter is yet sub judice, has announced a low bid of \$7,989,457 for construction of approximately four miles of the Susquehanna Expressway in the town of Sidney in Delaware County. According to the Department's announcement, the project calls for the construction of twin two-lane asphalt pavements separated by a median. Three bridges will be constructed and Route 8 will be resurfaced for 3.4 miles. The low bidder was announced to be John Arborio, Inc., of Poughkeepsie.

"If, as we believe, the State of New York has failed to comply with Federal environmental and highway planning requirements, it may well be that the State will be required to pay the entire cost itself of this type of pre-construction in the Susquehanna corridor. Where application has been made, as here, for Federal funding in connection with an Interstate Highway project, the State is required to follow Federal as well as State law, including the National Environmental Policy Act of 1969 and Federal laws relating to highway planning and the Susquehanna River.

"Suit has been brought, and the New York State Department of Transportation, along with the Federal defendants, has asked the Court for a ruling respecting this project, in the form of current motions now before the Court and awaiting decision. It is indeed inappropriate, in our judgment, that having sought the aid of the Court in ruling on these questions and while the matter is still before the Court, that the State of New York appears to anticipate the result by beginning construction.

"It is for these reasons that we respectfully urge that the State not approve the reported bid for this segment, but defer further State action in this matter until the Court

has acted on the current motions, and the legality of what is proposed to be accomplished is first established.

"Such deferral, which I believe prudent on the part of the State, would naturally be without prejudice to its position, and construction could proceed in the event there is court approval of the procedures which have been followed. On the other hand, if such court approval is not forthcoming, the State will have avoided being placed in the embarrassing position of having pre-expended State funds on a Federal project on which there will be no Federal reimbursement, to the detriment of the State treasury.

"I am disinclined, while the matter is in this posture, to go beyond the step of calling this action to your attention and thus putting the State on notice, in our opinion, that they are in violation of law in so proceeding at this time; further steps, in this regard, are deferred until the Court has acted with reference to the current motions, and it is clearer where we stand, respectively, with regard to the various legal questions raised and now pending decision."

* * *

No answer or acknowledgment to the foregoing was received from either the State or Federal defendants (A243, lines 5-7).

Motion for Preliminary Injunction

Thereafter, by order to show cause, a motion was made for a preliminary injunction enjoining defendants from the acceptance of bids, signature of contracts or the expenditure of funds in connection with the subject highway construction pending determinations of their then pending motions for summary judgment and, subject to such determination of the Court with

regard to the legality of the project and further review, from doing so contrary to law (Order to Show Cause for Preliminary Injunction, Sept. 10, 1973, Rec. on App., p. 134). Originally returnable on September 24, 1973, in Utica, this was adjourned from time to time, in part by reason of proposed intervention of certain contractors, eventually denied (A300-A301); the requested injunctive relief was eventually granted in the lower court's Memorandum-Decision and Order of November 14, 1973 (A302-A303; see A298-A300).

Position of New York State

In response to plaintiffs' motion below for a preliminary injunction, the State of New York took the position, as above noted, that in the event of an adverse conclusion to the litigation the State itself was prepared to complete the project, though perhaps in some revised form and schedule, without Federal aid (Affid. of Schuler, Sept. 24, 1973, p. 6; Rec. on App., p. 147).

Memorandum-Decision and Order
November 14, 1973

The Memorandum-Decision and Order of November 14, 1973 (A279-A320), insofar as here applicable, reviewed the causes of action asserted (A281-A287), the parties (A287-A288), and the

facts (A288, et seq.). The court below dismissed the Eighth Claim, relating to a Federal constitutional point (A296); and dismissed the pendent State law claims, Nos. Sixth, Seventh and Eighth (A296-A297), leaving only questions of Federal law to be determined (A297).

With regard to the remaining claims, the court then held as follows (A297, et seq.):

"In the discretion of the court, it seems more appropriate that the other claims asserted by the plaintiffs be disposed of after a full exploration of the facts on a hearing. * * * '(A) thorough probing, in-depth review' is preferable to summary judgment which is an 'unusually inappropriate vehicle for the determination of the issues.' * * *

There should be a trial to explore the probable issues involving environmental analysis, such as (a) whether environmental impact statements should be filed where they are not; (b) whether statements already filed are adequate; (c) whether the state or federal agency was the party preparing these statements; * * * (d) whether the segmental submission procedure impedes the environmental analysis function under NEPA; * * * and as to the issues involving hearings: (a) whether hearings should have been held where they have not been; (b) whether any promises or threats were made with regard to the withdrawal of requests for public hearings; and as to the

issues involving parklands: (a) whether more Section 4 (f) Statements need to be prepared; (b) whether the Section 4 (f) Statements that have been prepared are adequate to authorize a taking, under the statute, of parklands; and as to the issues involving navigability of the Susquehanna River, more facts must be put before the court so that it can determine whether the Susquehanna River is 'navigable' as a matter of law." * * *

With regard to the preliminary injunction, the court below continued (A298, et seq.) that in determining the relief to be afforded on an application for a preliminary injunction consideration should be given to the probability of success on the merits, irreparable injury to the movant, injury to the party opposing the motion, and the public interest to be served in granting the injunction. The court below concluded (A299), "On balance, the scales tip in favor of granting relief. An examination of the facts in the light of the applicable statutory and regulatory requirements as interpreted by the cases in the Court of Appeals of this circuit indicate a probability of success on at least some of the issues raised. The nature of the injury to the plaintiffs in and of itself makes it irreparable. These factors, together with the public interest to be served by some form of injunctive relief outweigh the injuries

claimed by the defendants." On the basis of these factors, the court below divided the project into three groups of PINs, or segments, and gave injunctive relief fashioned to the particular circumstances of each (A299-A300, A302-A303).

In connection with the injunctive relief aforesaid, the court below noted (Ftn. 80, A300, A318) the position of the State in the litigation that, in the event of an adverse conclusion thereto, the State would complete the project without Federal funds, in the following terms (A318):

"State Commissioner of Transportation Schuler has advised the court, by affidavit of Sept. 24, 1973, that the State of New York can and will, if necessary, build I-88 without Federal funds. See Schuler Affidavit, page 6."

* * *

Subsequent Modifications of Injunction

After the Memorandum-Decision and Order of November 14, 1973, a number of modifications were made with respect to the injunction as it applied to the road between Binghamton and Oneonta, already partially completed at the time of the injunction itself by reason of the State's pre-construction in the corridor, while the summary judgment motions were pending. The dates of the orders relating to these modifications are December 27, 1973 (Or-

der, Dec. 26, 1973, filed Dec. 27, 1973; cf. Affid. W. Hoppen, Dec. 6, 1973); May 24, 1974 (Memorandum-Decision and Order, May 24, 1974, Rec. on App., p. 348; cf. Affid. of Hoppen, May 17, 1974); and January 28, 1976 (Memorandum and Order, Jan. 28, 1976, filed Jan. 29, 1976, Rec. on App., p. 396; cf. Affid. of Hoppen, Jan. 22, 1976; Affid. R. Kafin, Jan. 16, 1976, Rec. on App., p. 376).

The current motion (A321, et seq.) to modify the preliminary injunction with regard to certain segments of the highway in Otsego and Schoharie counties, together with a renewed motion, in the alternative, for summary judgment (A443), was granted by the court below with respect to PINs 9357.08 - .17, and 1357.01 - .04 (A545-A546; A525-A526; see A547).

It is plaintiffs-appellants' position that the court below improperly disposed of the issues involved by summary judgment to the extent that there are genuine issues as to material facts involved in the resolution of the issues; and that there has been failure on the part of the State of New York to have complied with applicable Federal law. Both the facts and the law with reference to these issues will be taken up under the following points.

Issues of Fact
Rule 56(c), F.R.C.P.

For purposes of determination of the appropriateness of the remedy of summary judgment, the following issues of material fact, as raised by plaintiffs-appellants and in part sought to be controverted by defendants-appellants, are urged to constitute to that extent genuine issues of material fact within the terms of Rule 56(c), F.R.C.P., and were not to have been summarily determined by the court below:

Compliance with requirements of National Environmental Policy Act (Point II, infra)

Complaint, First Claim, A10-A15; A16-A17; A28; A65-A91, A92-A108, et seq., A353-A356, A407-A411, et seq., A422-A426, A472-A478, A479-A493, et seq.; also A357-A359.

Compliance by state agency or official having state-wide jurisdiction and having responsibility for action within meaning and intent of Act and Public Law 94-83 (Point IIIA, infra)

Complaint, First Claim, supra; A476-A478; A474.

Failure of responsible Federal official to furnish guidance and participate in preparation as required by Act and Public Law 94-83 (Point IIIB, infra)

Complaint, First Claim, supra; A515; A519-A524.

Failure of responsible Federal official independently to evaluate such statement or statements prior to approval and adoption (Point IIIC, infra)

Complaint, First Claim, supra; A515, A518, A521, A523-A524.

Issues of Fact, Rule 56(c), F.R.C.P., cont.

Failure of responsible Federal official to carry out statutory responsibilities for the scope, objectivity, and content of the various statements, and of his other responsibilities under the National Environmental Policy Act (Point IIID, infra)

Complaint, First Claim, A10-A15, A28; A474-A476; A515, A518-A524.

Failure adequately to have reported with regard to project's impact on air pollution, noise, and with regard to other required areas of report, including alternatives to the proposed action and energy implications (Point IV, infra)

Complaint, First Claim, A10-A15; Second Claim, A16-A17; also A28; A65-A91, A92-A108, et seq., A353-A356, A407-A411, et seq., A422-A426, A472-A478, A479-A493, et seq., A515-518, A524; also A357-A359.

Segmentation of environmental reporting, or piecemealing (Point V, infra)

Complaint, First Claim, A13; A288-A289, A291-A292, A294, A299-A300, A509-A514, A524.

Navigability of Susquehanna River and extent of agency compliance (Point VI, infra)

Complaint, Ninth Claim, A26-A27, A31; see Point VI, infra.

Compliance with requirements of Section 4(f) of Department of Transportation Act, 49 U.S.C., Sec. 1653(f), as amended, and Section 18(a) of Federal-Aid Highway Act of 1968, 23 U.S.C., Sec. 138, in connection with preservation of natural beauty of countryside and protection of public park and recreation lands (Point VII, infra)

Complaint, A17-A19, A28-A29; Comments of U.S. Dept. of Interior, Dec. 6, 1971 (Exh. 54 to Affid. of Memmott 8/17/72), at pp. 1-2, 5, 8-9; also A224-A226, A234, A237.

Issues of Fact, Rule 56(c), F.R.C.P., cont.

Compliance with 23 U.S.C., Sec. 128, with regard
to holding of public hearings (Point VIII, infra)

Complaint, Fourth Claim, A19-A21, A29; A205-
A240.

Inclusion of project as part of Interstate System
(Point IX, infra)

Complaint, Fifth Claim, A21-A22, A29; A44-
A58.

POINT I

SUMMARY JUDGMENT WAS AN INAPPROPRIATE REMEDY

Rule 56 of the Federal Rules of Civil Procedure, insofar as here applicable, provides that summary judgment may be granted upon a showing that there is no genuine issue as to any material fact (Rule 56(c), F.R.C.P.). A fair examination of the record will establish that there are genuine issues of material fact, and that summary judgment was an inappropriate remedy (Monroe County Conservation Council, Inc. v. Volpe, 42 F.2d 693, 700-703 (2nd Cir., 1972); Ecology Center of Louisiana, Inc. v. Coleman, 515 F.2d 860, 864-865, et seq., 872 (5th Cir., 1975); Hopewell Township Citizens I-95 Committee v. Volpe, 432 F.2d 376, 380, 381 (3rd Cir., 1973); Committee for Nuclear Responsibility, Inc. v. Seaborg, 463 F.2d 783, 787-788 (D.C. Cir., 1971); Sierra Club v. Volpe, 351 F.Supp. 1002, 1006, 1009 (N.D. Calif., 1972; also, United States v. Pot-Nets, Inc., 363 F.Supp. 812, 816-817 (D. Del., 1973); United States v. Cannon, 363 F.Supp. 1045, 1051, 1052 (D. Del., 1973); cf. Coxsey v. Hallaby, 334 F.2d 286, 287 (10th Cir., 1964); Archbold v. McLaughlin, 181 F.Supp. 175, 180 (D.C., 1960).

The foregoing cases are consistent with established law in civil cases generally:

See: United States v. Diebold, 369 U.S. 654-655 (1962);

Ring v. Schlesinger, 502 F.2d 479, 490 (D.C. Cir., 1974);

Goodis v. United Artists Television, Inc. 425 F.2d 397, 405 (concurring opin.) (2nd Cir., 1970); and,

Jobson v. Henne, 355 F.2d 129, 132-133 (2nd Cir., 1966; dissent).

In Monroe County Conservation Council, Inc. v. Volpe, 472 F.2d 693, supra, involving proposed construction of an expressway through a public park, this Court in reversing and remanding a summary judgment ruled that summary judgment was an unusually inappropriate vehicle for determination of such issues (472 F.2d, at pp. 700, 703):

"It is abundantly clear * * * summary judgment was an unusually inappropriate vehicle for determination of the issues. * * *

* * *

(p. 703)

"The decision of the district court is reversed, and the case is remanded with the direction that the Secretary of Transportation be enjoined * * * until * * * after proper hearing * * * "

* * *

POINT II

DEFENDANTS HAVE FAILED TO COMPLY WITH THE REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, 42 U.S.C., SECTION 4321, ET SEQ., WITH REGARD TO BRINGING THE AUTHORITY AND PROCEDURES OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION INTO CONFORMITY WITH THE INTENT, PURPOSES, AND PROCEDURES OF SAID ACT.

Insofar as here applicable, the provisions of the National Environmental Policy Act of 1969, Pub.L. 91-190, 83 Stat. 852, 42 U.S.C., Sec. 4321, et seq., provide as follows:

"§ 4321. Congressional declaration of purpose

"The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; * * *

"§ 4331. Congressional declaration of national environmental policy

"(a) The Congress, recognizing the profound impact of

man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

"(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may--

"(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

"(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

"(3) attain the widest range of beneficial use of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences;

"(4) preserve important historic, cultural, and natural aspects of our natural heritage, and maintain, wherever possible, an environment which supports diversity and a variety of individual choice;

"(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

"(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

"(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

"§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

"The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall--

"(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

"(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

"(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

"(i) the environmental impact of the proposed action,

"(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

"(iii) alternatives to the proposed action,

"(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

"(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

"Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and the public as provided by section 552 of Title 5,

and shall accompany the proposal through the existing agency review processes;"

* * *

Continuing, and as amended by Public Law 94-83 with the addition of a new subparagraph (D), hereinafter to be considered, the National Environmental Policy Act further provides that all agencies of the Federal government shall,

"(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

"(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

"(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

"(H) initiate and utilize ecological information in

the planning and development of resource-oriented projects;" * * *

Other provisions of the National Environmental Policy Act of 1969, supra, concern the Council on Environmental Quality, other statutory obligations of agencies (§ 4334), and efforts supplemental to existing authorizations (§ 4335). In addition, specific provision is made, by Section 4333, by date certain, to require agencies of the Federal Government to bring their authority and policies into conformity with the intent, purposes, and procedures of the National Environmental Policy Act. This, insofar as here relevant, is done in the following terms (43 U.S.C., § 4333):

"§ 4333. Conformity of administrative procedures to national environmental policy

"All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose * * * such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes and procedures set forth in this chapter."

* * *

The record establishes issues of fact with regard to the adequacy of defendants' compliance with the requirements of the National Environmental Policy Act (A11-A15, A16-A17, A28, A65-A91, A92-A108, et seq., A353-356, A407-A411, et seq., A422-A426, A472-A478, A479-A493, et seq.; also A357-359). The status of the defendants' compliance with the National Environmental Policy Act of 1969, as of the time of the Memorandum-Decision and Order of November 14, 1973, was as set forth at A293-A294 and A299-A300. As of that time, four segments had received PS&E approval and were under construction although no environmental impact statements had been filed (PINs 9357.00, 9357.01, 9357.20, 9357.19; see A299-A300).

On the basis of the record of this case, it is respectfully urged that the State and Federal officials have failed to comply with the requirements of said Act with regard to bringing the authority and procedures of the United States Department of Transportation into conformity with the intent, purposes, and procedures of said Act, or with the particular requirements of Public Law 94-83, 42 U.S.C., Sec. 4332(D), effective August 9, 1975, in that it was not prepared by a State agency or official having statewide jurisdiction and having the responsibility within the meaning and intendment of the Act and as otherwise set forth in the accompanying points in implementation of the required Federal responsibility under the Act.

It is further the position of appellants, apart from the failure of said officials to have complied with the Act as aforesaid, that the project sponsor, the New York State Department of Transportation has failed adequately to have reported with regard to the project's impact on air pollution, noise pollution, and on other protected environmental areas, or in terms of alternatives to the proposed action. Basically, this relates to the alleged substantive deficiencies of the various segmented statements as reviewed in the materials already before the district court on the original motions for summary judgment and injunctive relief.

Since the time of the 1973 Memorandum-Decision and Order (A279, et seq.; see A293-A294), there was little substantive change in the reports then made, except with regard to supplementing the report on the Schenectady terminus. The State, essentially, has stood pat on the statements already made, with the addition of a so-called "comprehensive review" of the original segmented statements, apparently prepared by a consultant. The question of segmentation, it is urged, is broader than the mode of reporting, and the question of how the report or reports are bound. Illegal segmentation or piecemealing, to the extent herein carried out, strikes at the heart of the purpose of the National Environmental Policy Act and the good faith of the re-

porting process itself as related to the purpose of the statute. There has never, in this case, been such a comprehensive overview and report on the basic postulates that led to the construction decision, on an inter-modal basis. Rather, as heretofore noted, the segmented procedure employed in reporting, and then continued with the remaining segments and the so-called "comprehensive overview" or summary of the segments, has been employed, through diversionary attention to detail, to avoid just such a comprehensive overview in the sense required by the statute, and to mask a predetermination to build made in the prior decade primarily on fiscal grounds (i.e., availability of Federal funding) that thrusts through the impact reporting process and contrary requirements of law as mere as mere impertinences to the original determination.

Such being the case, it is clear that the objection to segmentation of environmental reporting, to the extent herein practiced, continues to be a frustration of the comprehensive planning function, and is inconsistent with this Court's decision in Greene County Planning Board v. Federal Power Commission, 455 F.2d 412 (2nd Cir., 1972), cert. den. 409 U.S. 849, and the National Environmental Policy Act.

In conclusion, the procedures of the United States Department of Transportation as established and as applied in the

instant case, do not conform to the intent, purposes, and procedures of the National Environmental Policy Act, and are in violation thereof in terms of failing to carry out the statutory purpose. More particularly, as reaffirmed in Public Law 94-83 and as taken up more particularly in the succeeding point, the Department of Transportation, in its delegation of functions to State highway agencies, such as the defendant New York State Department of Transportation, has failed to assure and effect the continuing responsibility of the responsible Federal official under the National Environmental Policy Act, as amended, for the scope, objectivity, and content of required environmental report and for the performance of his other responsibilities under the Act.

POINT III

THE STATE AND FEDERAL DEFENDANTS HAVE FAILED TO COMPLY WITH THE REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, 42 U.S.C., SECTION 4321, ET SEQ., AND WITH PUBLIC LAW 94-83, IN THAT THEY HAVE FAILED TO COMPLY, IN TERMS, WITH THE SPECIFIC REQUIREMENTS OF SAID PUBLIC LAW AND OF THE NATIONAL ENVIRONMENTAL POLICY ACT AS AMENDED.

By Public Law 94-83, effective August 9, 1975, a new subparagraph (D) was added to Section 102(2) of the National Environmental Policy Act in order to clarify procedures with respect to the preparation of environmental impact statements, as follows (42 U.S.C. 4332):

"(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed legally insufficient solely by reason of having been prepared by a State agency or official, if:

"(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

"(ii) the responsible Federal official furnishes guidance and participates in such preparation,

"(iii) the responsible Federal official inde-

pendently evaluates such statement prior to its approval and adoption * * *

* * *

"The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act * * * ."

In reaffirming the responsibility of the Federal official for compliance with the Act, Congress in the Committee Reports accompanying H.R. 3130, which eventually became Public Law 94-83, emphasized this aspect of continuing Federal responsibility, and in the House Report (No. 94-144, 94th Cong., 1st Sess., p. 6) specifically confirmed the authority of the Greene County case in the following terms:

"The Conservation Society opinion is a successor to an earlier opinion of the Court of Appeals for the Second Circuit in Greene County Planning Board v. Federal Power Commission, 455 F. 2d 412 (2d. Cir., 1972), Cert. Denied, 409 U.S. 849 (1973). The Greene County decision is the first and leading opinion on the 'delegation' question. The reasoning of that opinion and the basic holding in the case have never been rejected by a court, nor should H.R. 3130

be interpreted as disturbing the basic logic of that case."

* * *

- A. DEFENDANTS HAVE FAILED TO COMPLY WITH THE ACT AND PUBLIC LAW AFORESAID IN THAT, CONTRARY TO THE REQUIREMENTS OF SUBPARAGRAPH (D)(i) THEREOF, COMPLIANCE HAS NOT BEEN BY A STATE AGENCY OR OFFICIAL HAVING STATEWIDE JURISDICTION AND HAVING THE RESPONSIBILITY FOR SUCH ACTION WITHIN THE MEANING AND INTENDMENT OF THE ACT.
-

On information and belief, based on the State's moving papers, the so-called "Final Environmental Impact Statement" incorporated as part of the report on the Sanitaria Springs to the Broome-Chenango County Line segments, styled "Comprehensive Statement of environmental considerations from Binghamton to the Capital District" for Interstate Route 88 (The Susquehanna Expressway) (Affidavit of Hoppen, Sept. 9, 1976, pp. 5-7, A476-A478; cf. id., p. 3, A474, Public Law 94-83, supra), was not prepared by a State agency or official having statewide jurisdiction and the responsibility for such action, as required by law, but by a consultant.

Apart from the substantive deficiencies in terms of reporting of the so-called "Final Environmental Impact Statement", thus denominated, it is apparent that the failure of the State officials to have followed the requirements of law in the reporting process, including compliance with the requirements of Public Law 94-83, are directly related to the so-called final statement's

deficiencies in terms of scope, objectivity, and content, hereinafter considered, all of which remain a Federal responsibility under the Public Law and which have been ignored, particularly in terms of planning for and report upon alternatives to the proposed action.

- B. DEFENDANTS HAVE FAILED TO COMPLY WITH THE ACT AND PUBLIC LAW AFORESAID IN THAT, CONTRARY TO THE REQUIREMENTS OF SUBPARAGRAPH (D)(11) THEREOF, THE RESPONSIBLE FEDERAL OFFICIAL DID NOT FURNISH GUIDANCE AND PARTICIPATE IN SUCH PREPARATION AS REQUIRED BY THE STATUTE.

Further urged to be in violation of the requirements of the National Environmental Policy Act and of Public Law 94-83 is the failure of the responsible Federal official under the Act to have furnished guidance and participated in such preparation as required by law. This is directly related to the larger points heretofore urged, that defendants have failed to comply with the requirements of the National Environmental Policy Act with regard to bringing the authority and procedures of the United States Department of Transportation into conformity with the intent, purposes, and procedures of said Act (Complaint, First Claim, A13-A15); that defendants have further failed to comply with the requirements of the Act in that the project sponsor has failed adequately to have reported with regard to the project's impact on air pollution, noise pollution, and on other protected environmental areas, or in terms of alternatives to the proposed action (A11-

-A15, A16-A17, A28, A65-A91, A92-A108, et seq., A353-A356, A407-A411, et seq., A422-A426, A472-A478, A479-A493, et seq.; also A357-A359); and that segmentation of environmental reporting, to the extent herein practiced by the project sponsor, is a frustration of the comprehensive planning function, and is inconsistent with the purpose and authority of this Court's decision in the Greene County case and the National Environmental Policy Act itself.

To the extent that these failures in terms of compliance with the law itself, and in terms of lack of adequacy of supplement report, are within the responsibility of the defendant Federal Secretary of Transportation as the responsible Federal official, and within the statutory mandate of Public Law 94-83 with regard to the scope, objectivity, and content of such reporting, no recourse to mere delegation, or sub-delegation, can relieve him of these statutory responsibilities.

The Federal defendants, by the affidavit and supplemental affidavit of Nostrand, dated June 14 and August 6, 1976, respectively (A427-A439, A463-A471), with exhibits thereto attached (Rec. on App., ff. p. 468; id., ff. p. 565) have undertaken to establish the requisite guidance and participation under the Public Law to assert compliance therewith. A careful review of those affidavits and the documents submitted, it is re-

spectfully urged, will establish no more than token or paper compliance with the requirements of the Public Law, and do not show that degree of guidance by defendant Secretary of Transportation in the reporting process that carry out his Federal responsibilities for the scope, objectivity, and content of the various reports or of his other responsibilities under the Act, particularly with reference to assuring the substantive quality of the subject reporting, including planning for and report upon alternatives, consideration of energy factors as relating thereto, and the comprehensive scope of reporting as distinguished from the segmented procedure herein followed to the detriment of the Secretary's reporting responsibilities under the National Environmental Policy Act as confirmed and made explicit by the Congress in Public Law 94-83.

- C. DEFENDANTS HAVE FAILED TO COMPLY WITH THE ACT AND PUBLIC LAW AFORESAID IN THAT, CONTRARY TO THE REQUIREMENTS OF SUBPARAGRAPH (D)(iii) THEREOF, THE RESPONSIBLE FEDERAL OFFICIAL DID NOT INDEPENDENTLY EVALUATE SUCH STATEMENT OR STATEMENTS PRIOR TO THEIR APPROVAL AND ADOPTION, BUT APPROVED THEM IN A ROUTINE MANNER NOT CONSISTENT WITH THE STATUTORY REQUIREMENTS OF FEDERAL RESPONSIBILITY.
-

This point is closely related to that heretofore considered under Point IIIB above, that defendants have failed to comply with the requirements of the National Environmental Policy Act and with Public Law 94-83, in that the responsible Federal official, in this case the defendant United States Secretary of

Transportation did not furnish guidance and participate in such preparation as required by the statute. There is no evidence in the affidavits of Nostrand (A427-A439, A463-A471) or the exhibits attached, supra, that there was any serious consideration at the Federal level of the basic issues which are the Secretary's responsibility in the conduct of the United States Department of Transportation and the reporting and decisionmaking responsibility attendant thereon, in terms of planning for and report upon alternatives, consideration of energy factors as related thereto, and the comprehensive scope of reporting frustrated and subverted by the extreme segmented procedure or piecemealing herein employed. As a matter of fact, under existing Department of Transportation procedures, there is no basic guidance from the Secretary to the variety of State highway officials and FHWA personnel making these decisions, in terms of multi-modal choice, consideration of planning and land use alternatives to highway construction, or assurance of consideration of these departmental and national considerations in transportation planning.

D. DEFENDANTS HAVE FAILED TO COMPLY WITH THE ACT AND PUBLIC LAW AFORESAID IN THAT, CONTRARY TO THE EXPRESS REQUIREMENTS OF SUBPARAGRAPH (D) THEREOF, THE RESPONSIBLE FEDERAL OFFICIAL FAILED TO CARRY OUT HIS STATUTORY RESPONSIBILITIES FOR THE SCOPE, OBJECTIVITY, AND CONTENT OF THE VARIOUS STATEMENTS, AND OF HIS OTHER RESPONSIBILITIES UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT.

Again, this point is related to those heretofore considered under Points IIIB and IIIC, above, that defendants have failed to comply with the requirements of the National Environmental Policy Act and Public Law 94-83, in that the Secretary of Transportation, as the responsible Federal official under law, did not furnish guidance and participate in such preparation as required by statute, and did not independently evaluate such statement or statements prior to their approval or adoption, but approved them in a routine manner, through subordinates, in a fashion not consistent with the statutory requirements of Federal responsibility therefor.

Indeed, to the extent that it may become evident upon trial that the Secretary, having delegated the execution of his Federal responsibility to the Federal Highway Administration which, in turn, delegated same to a regional highway administrator at Albany who, in turn, looked to certain subordinate officials of the New York State Department of Transportation to carry out the Federal responsibility and who, in turn, contracted out this Federal responsibility to a consultant, the identity of which or

whom the State has not disclosed in its papers makes particularly important the terms under which the consultant was hired, and the extent to which the contract with the consultant reflected an obligation on the consultant's part, given the execution of Federal policy involved, to consider and report upon the factors of multimodal choice, planning and land use alternatives to highway construction, the energy factors as relating thereto, and required comprehensive scope of reporting within the terms of the statutory mandate upon the Secretary regarding his responsibilities for the scope, objectivity, and content of the statement or statements and of his other responsibilities under the Act.

In sum, it is respectfully urged on the basis of the record that the State and Federal officials have failed to comply with the requirements of law with regard to bringing the authority and procedures of the United States Department of Transportation into conformity with the intent, purposes, and procedures of said Act, or with the particular requirements of Public Law 94-83, 42 U.S.C., Sec. 4332(D), effective August 9, 1975, in that it was not prepared by a State agency or official having statewide jurisdiction and having the responsibility within the meaning and intent of the Act; the responsible Federal official did not furnish guidance and participate in such preparation as required by the statute; the responsible Federal official did not independently evaluate such statement or statements prior to their approval

and adoption, but approved them in a routine manner not consistent with statutory requirement of Federal responsibility therefor; and the responsible Federal official failed to carry out his statutory responsibilities for the scope, objectivity, and content of the various statements, and of his other responsibilities under the National Environmental Policy Act.

We have referred above to the extent to which the procedures of the Department of Transportation do not comply with N.E.P.A., and the failure of defendants to have complied with the particular requirements of Public Law 94-83. We will now consider, in particular, judged on the basis of the actual procedures used or misused, the extent to which the environmental material prepared by the State (and thus inadequately supervised and approved by the Federal officials) has failed adequately to report with regard to the project's impact on air pollution, noise pollution, and on other protected environmental areas, or in terms of consideration of alternatives to the proposed action, particularly the energy implications of the proposed project in light of potential or probable restrictions attendant upon the growing energy crisis and the non-availability, shortage, or higher price ranges of petroleum-derived fuels, which are now coming into question as a matter of national policy.

POINT IV

DEFENDANTS HAVE FAILED TO COMPLY WITH THE REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, 42 U.S.C., SECTION 4321, ET SEQ., AND WITH PUBLIC LAW 94-83, IN THAT THE PROJECT SPONSOR, THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION, HAS FAILED ADEQUATELY TO HAVE REPORTED WITH REGARD TO THE PROJECT'S IMPACT ON AIR POLLUTION, NOISE, AND WITH REGARD TO OTHER REQUIRED AREAS OF REPORT, INCLUDING ALTERNATIVES TO THE PROPOSED ACTION; AND HAS SEGMENTED THE REPORTING HEREIN TO A DEGREE INCONSISTENT WITH AND IN FRUSTRATION OF ITS MANDATED PLANNING FUNCTION.

There has been failure adequately to report with regard to the project's impact in terms of air pollution, noise pollution, and other protected environmental areas, or in terms of alternatives to the proposed action (A11-A15, A16-A17, A28, A65-A91, A92-A108, et seq., A353-A356, A407-A411, et seq., A422-A426, A472-A478, A479-A493, et seq.; also A357-A359).

It is apparent, also, on the basis of the facts before the Court in terms of the deficiencies of the segmented environmental impact statements, that they reflect neither the scope, objectivity, nor content requisite for compliance with the requirements of the National Environmental Policy Act (or Public Law 94-83). Apart from the segmented character of the state-

ments themselves, which will be taken up subsequently, and the net effect of which is to blur the larger environmental impact involved, the segmented statements and accompanying materials do not meet the requirements of the national Act in terms of their reports of the project's impact on air pollution, noise pollution, on natural values and other protected areas, or in terms of alternatives to the proposed action. As a result, it is quite clear that, notwithstanding the affidavits of Messrs. Kirby, Altobelli and Borakis, and of Mr. Nostrand, the project sponsor has done no more than to file a large number of somewhat repetitive and withal shallow and superficial statements, and a similarly shallow and superficial summary thereof in terms of its asserted "comprehensive overview", in token compliance with the Federal Act but, in actuality, in implementation of an administrative pre-determination, based on the availability of Federal funding, that the highway would be constructed, extrinsic of and not dependent on environmental considerations. We have already taken up, in some detail, the factual issues involved in assessment of the sufficiency of the reporting process and the impact statements, as related to the inappropriateness of the remedy of summary judgment.

In particular, the affidavit of Brian T. Ketcham, P.E. (A479, et seq.) relates to deficiencies of the particular state-

ments, including the so-called "Comprehensive Statement" (A480, et seq.) with regard to particular deficiencies therein with respect to the project's impact on air quality, with respect to noise, and other required aspects of report, including alternatives to the proposed action and the energy implications thereof.

Most of the environmental reporting with regard to this highway, in fact, has been in segmented form and antedates 1973. The so-called "Comprehensive Statement", it would appear, itself is based in large part upon this prior and inadequate segmented report, supplemented by additional segmented reports, some prepared indeed after the fact of or commitment to construction, and all modally oriented toward support of the 1968 build decision, to the exclusion of the reasonable and effective consideration of modal alternatives. Involved in this type of segmentation of reporting and decisionmaking is a large element of administrative coercion to carry out construction of links between those already built and to extend the construction, urged by plaintiffs to have been done on an illegal basis, without at any time effectively having considered alternatives in accordance with the requirements of law.

In short, it is plaintiffs' position subject to proof

upon trial that defendants have failed to comply with the requirements of the National Environmental Policy Act of 1969 and Public Law 94-83, in that there has been failure of adequate report with regard to the project's impact on air pollution, noise, and with regard to other areas of report, including water quality and the Susquehanna River, energy, and alternatives to the proposed action; and have segmented the reporting herein to a degree inconsistent with and in frustration of the requirements of law, all of which involve genuine issues of material fact, appropriate to be resolved only upon trial, and not by summary judgment.

We have considered, herein and in the record before the Court, the substantive deficiencies of the State's environmental impact statements in terms of failure adequately to have reported in the above respect, and particularly with reference to the energy implications of building the highway, and alternatives. We will next consider the continuing issue of segmentations of reporting, or piecemealing, as a frustration of the comprehensive planning function and of N.E.P.A. itself.

POINT V

SEGMENTATION OF ENVIRONMENTAL REPORTING, TO THE EXTENT HEREIN PRACTICED BY THE PROJECT SPONSOR, IS A FRUSTRATION OF THE COMPREHENSIVE PLANNING FUNCTION, AND IS INCONSISTENT WITH THE PURPOSE AND AUTHORITY OF GREENE COUNTY PLANNING BOARD V. FEDERAL POWER COMMISSION, 455 F.2D 412, AND THE NATIONAL ENVIRONMENTAL POLICY ACT.

The plans for this highway divide it up into about 25 segments of approximately 2 - 6 miles each in length, each designated by a Project Identification Number (PIN); ranging from 9357.00 - 9357.20, and 1357.01 - 1357.17 (A288-A289). Environmental reporting, in a number of separate statements, has related to the construction imperatives reflected by these PINs (A294; see A299-A300). It is safe to say that in no highway project to counsel's knowledge has the practice of piecemealing been effected to the degree we are faced with in I-88, to the detriment of comprehensive reporting and the requirements of the National Environmental Policy Act. See Swain v. Brinegar, 542 F.2d 364, 368-370 (7th Cir., 1976); Indian Look-out Alliance v. Volpe, 484 F.2d 11, 17-20 (8th Cir., 1973); Appalachian Mountain Club v. Brinegar, 394 F.Supp. 105, 114-117 (D. N.H., 1975); Committee to Stop Route 7 v. Volpe, 346

F.Supp. 731, 739-741 (D. Conn., 1972); Sierra Club v. Volpe, 351 F.Supp. 1002, 1008-1009 (N.D. Calif., 1972); Thompson v. Fugate, 347 F.Supp. 120, 123-124 (E.D. Va., 1972); also, Named Ind. Mem. of San Antonio Con. Soc. v. Texas Hy. Dept., 446 F.2d 1013, 1022-1024 (5th Cir., 1971).

The question of segmentation or piecemealing, of course, is a troublesome one of degree, but to the extent herein practiced makes mockery of the purpose of the National Environmental Policy Act and the good faith of the reporting process itself. There has never, in this case, been a comprehensive overview and report, within the intendment of the statute, on the basic postulates that led to the construction decision, on an inter-modal basis. Rather, as heretofore noted, the segmented procedure employed in reporting (and subsequently continued with the remaining segments and the so-called "comprehensive overview" or summary of the segments) has been employed, through diversionary attention to detail, to avoid just such a comprehensive overview in fact and in the sense required by the statute, and to mask a predetermination to build made in the prior decade primarily on fiscal grounds (i.e., availability of Federal funding) that thrusts through the impact reporting process and contrary requirements of law as mere impertinences to the original determination.

Such being the case, it is clear that the objection to segmentation of environmental reporting, to the extent herein practiced and carried out by the project sponsor, continues to be a frustration of the comprehensive planning function, and is inconsistent with the authority of this Court's Greene County decision and the National Environmental Policy Act itself.

To the extent that this is not to be resolved as a matter of law and constitutes a genuine issue of material fact under Rule 56(c), F.R.C.P., see, also, Ecology Center of Louisiana, Inc. v. Coleman, 515 F.2d 860, 870, and ftn. 12; also 862-863 (5th Cir., 1975).

POINT VI

THE SUSQUEHANNA RIVER IS NAVIGABLE

The State of New York has asserted, and apparently based its planning on the proposition that the Susquehanna River in New York State is not navigable. This is contained in the Affidavit of Memmott, the New York State Department of Transportation planner, as follows (Affid. of Memmott, Aug. 17, 1972, p. 30):

"(T)he Susquehanna River in New York State is not classified as a navigable water. This was verified in a letter from R. W. Gasior of the Ninth Coast Guard District of the United States Department of Transportation to A. W. Moon, Assistant Deputy Chief Engineer of the NYDOT, dated February 22, 1971 (129), which letter was in response to an inquiry regarding the construction of I-88 bridges."
* * *

This conclusion is inconsistent with People ex rel. New York, Ontario and Western Railway Company v. The State Tax Commission (Sup. Ct., Albany Co., 1921) 116 Misc. 774, which held, for purposes of New York State law, that the Susquehanna River was navigable from the outlet of Otsego Lake throughout its whole course. In particular, in this, involving the issue of the Susquehanna's navigability for purposes of determining the tax assessment of a bridge crossing that river, it was held (116 Misc., at p. 775, et seq.):

"By section 34 of chapter 186 of the Laws of 1801, the

legislature of the state declared the outlet of Otsego Lake, and all such parts of the Susquehanna river as are contained within this state, to be public highways, except so much of the waters as might be necessary for the owners of the adjoining land to build storehouses and docks for the accommodation of boats, provided the same should not obstruct the navigation of said stream.

"The test of navigability in law, is navigability in fact. Rivers are navigable in fact when they are used or are susceptible of being used in their ordinary condition by the public as highways of commerce. * * *

(p. 776):

"It is not necessary that in order to be navigable the river should be deep enough to admit the passage of boats at all portions of the stream. Danes v. State of New York, 219 N. Y. 67, 71; St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners, 168 U. S. 349. A river is in fact navigable on which boats, lighters or rafts may be floated to market. Matter of Deposit Fishway, 131 App. Div. 403, 412. The capacity to float logs, singly or together, to run rafts, however small, gives to all the public this easement, the right to use and navigate. Buffalo Pipe Line Co. v. New York, Lake Erie & Western R. R. (Barker, J.) 10 Abb. N. C. 107, 111. The legislature has the right to declare as a public highway a navigable river. Smith v. City

of Rochester, 92 N. Y. 463, 485. * * *

(p. 777):

"The record is silent as to the natural condition of the river at the time of the passage of the act of 1801. In the year 1779, General Clinton confined the waters of Otsego lake, and breaking away the dam floated his transports down the river. The record discloses that even after the railroad was built alongside the river and before the advent of the automobile, houseboats would frequently come down the river in an ordinary condition of the water. One witness states the number at possibly fifty in one year. The witness describes two of the boats as built 'on the scow pattern, and a big top on them.' Fleets of boats and canoes came down from which the occupants would camp out overnight, or become guests of hotels along the river. Cooperstown was settled very early. The cutting down of the forests and clearing of the land has done away with the floating of rafts. In 1811 the legislature authorized the construction of the Phoenix Cotton Mill dam about three miles from the outlet of Otsego lake, making provision for the construction of locks for passage of boats up and down the river. Since then many other acts have been passed authorizing the construction of dams in the Susquehanna river. The large dams at Colliers, Oneonta,

and between Unadilla and Otsego, for the generation of electric light and power, are among the more modern constructions.

* * *

(p. 778):

"The conclusion is, that in 1801 the Susquehanna river was navigable from the outlet of Otsego lake throughout its whole course." * * *

The Rivers and Harbors Act of 1899 provides, in part, as follows:

"It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of the Army * * * " 33 U.S.C., Section 401 (1971).

In United States v. Joseph G. Moretti, Inc., 331 F.Supp. 151 (S.D. Fla., 1971), the court considered and granted injunctive relief against a developer who had violated the statute. In particular, and insofar as here applicable, the court stated in part

(331 F. Supp., at p. 157, et seq.):

"D. Florida Bay, at Hammer Point, Key Largo, Florida, is a navigable water of the United States. The federal test of whether a body of water is navigable depends on whether it is capable, in its natural form or with reasonable modifications, to sustain commerce or transportation. *Davis v. United States*, 185 F.2d 938, 943 (9th Cir.) cert. den., 340 U.S. 932, 71 S.Ct. 495, 95 L.Ed 673 (1950). Under the Federal test, there can be no question that Florida Bay at Hammer Point, Key Largo, is a navigable water of the United States. * * *

"E. The authority of the United States over navigable water extends to the ordinary high water mark and any work done below this line without prior authorization is illegal. * * * When excavation or filling is undertaken without authority from the Secretary of the Army as delegated to the Chief of Engineers, that constitutes a violation of Title 33, United States Code, Section 403. The Chief of Engineers has delegated authority to the District Engineers to issue certain types of permits and has set forth a criteria for obtaining permits. These criteria are published commencing at Section 209.120, Title 33, Code of Federal Regulations.

"F. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) specifically states that work in navigable

waters must be recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning same.

* * *

"I. In view of the Wildlife Coordination Act of 1958 and the Environmental Policy Act of 1969, the Court, in considering the Government's petition for an injunction, must consider the ecological impact to the area involved. *Zabel v. Tabb*, 296 F.Supp. 764 (D.C. 1969), affirmed, 430 F.2d 199 (5th Cir., July 16, 1970)."

* * *

In Citizens Committee for the Hudson Valley v. Volpe, 302 F.Supp. 1083 (S.D., N.Y., 1969), affd. 425 F.2d 97 (2nd Cir., 1970), cert. den. 400 U.S. 949, this Court upheld the authority of the Rivers and Harbors Act of 1899 to prevent exercise of construction authority in contravention of its terms.

See, also,

Economy Light Co. v. United States
256 U.S. 113 (1921);

United States v. Holt Bank
270 U.S. 49 (1926); and,

Utah v. United States
403 U.S. 9 (1971).

Tatum v. Blackstock, 319 F.2d 397
(5th Cir., 1963);

Montana Power Co. v. Federal Power Commission
185 F.2d 491, 495-496 (D.C. Cir., 1970)
cert. den. 340 U.S. 947 (1970), rehearing
den. 341 U.S. 912 (1970).

In short, the issue of the navigability of the Susquehanna River, on the basis of the record before the Court, is one of mixed law and fact, and there are genuine issues of material fact with reference thereto, and the extent of agency compliance with Federal law that render summary judgment an inappropriate remedy.

POINT VII

DEFENDANTS HAVE FAILED TO COMPLY WITH THE TERMS OF SECTION 4(f) OF THE DEPARTMENT OF TRANSPORTATION ACT, 49 U.S.C., SECTION 1653(f), AS AMENDED, AND SECTION 138 OF THE FEDERAL-AID HIGHWAY ACT OF 1968, 23 U.S.C., SECTION 138, IN CONNECTION WITH THE PRESERVATION OF THE NATURAL BEAUTY OF THE COUNTRYSIDE AND OF PROTECTION OF PUBLIC PARK AND RECREATION LANDS.

By Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. §1653(f) which, as amended, is virtually identical to Section 18(a) of the Federal-Aid Highway Act of 1968, 23 U.S.C., §138, it is provided as follows:

"It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain and enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreation area, wildlife and waterfowl refuge, or historic site resulting from such use."

This must be applied to the instant case under the legal guidelines established by the Supreme Court in Citizens to

Preserve Overton Park v. Volpe, 401 U.S. 402 (1971). In reversing the Court of Appeals and remanding the case for further consideration on this point, the Supreme Court emphasized in its opinion the standards for agency action within the framework of the Congressional policy, that (401 U.S., at p. 411) "This language is a plain and explicit bar to the use of federal funds for construction of highways through parks--only the most unusual situations are exempted."

Further, the Supreme Court stated (*id.*, at pp. 412-413):

"(T)he very existence of the statutes indicates that the protection of parkland was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that alternative routes present unique problems."

* * *

It is against this standard, laid down by the Supreme Court, that the record in the instant case must be judged (see Affid. of Memmott, Aug. 17, 1972, pp. 21-22, and Exhibits cited; Rec. on App., p. 70, et seq.; compare Comments of United States Department of Interior, Dec. 6, 1971, Exhibit 54, at pp. 1-2, 5, 8-9 - Exh. to Affid. of Memmott, *supra*).

Upon remand by the Supreme Court, the District Court ap-

plied the foregoing standard and, after plenary hearing, further remanded the matter to the Secretary of Transportation for the purpose of making a route determination in compliance with Section 4(f) of the Department of Transportation Act as that provision had been construed by the Supreme Court. Citizens to Preserve Overton Park, Inc. v. Volpe, 335 F.Supp. 873 (W.D. Tenn., 1972). Again, and with particular reference to the standard to be applied in connection with such determination by the Secretary, the court stated (335 F.Supp., at p. 874, et seq.):

"In its opinion, the Supreme Court gave a narrow interpretation to the requirements of §4(f) of the Department of Transportation Act of 1966 (49 U.S.C.A. §1653(f)) that the Secretary not release funds for the construction of a highway using public parkland unless there is no 'feasible and prudent' alternative. It held that, while such factors as cost, directness of route and community disruption were not to be ignored, the purpose of this provision was to give 'protection of parkland . . . paramount importance.' 401 U.S. at 412-413. It held that an alternative route is 'feasible' within the meaning of this provision unless its use would be contrary to 'sound engineering.' 401 U.S. at 411. And it further held that an alternative route is 'prudent' within the meaning of this provision unless its use involved 'truly unusual factors' or its use involved 'cost or community disruption . . . (of) extraordinary magnitudes.' 401 U.S. at 413. Although there is a proviso in §4(f) that would appear to make the provision applicable only if the local officials having jurisdiction of the park determined it to be of local significance for §4(f) purposes, the opinion gave no such effect to this proviso; indeed, the opinion implicitly holds that the fact that local officials in Memphis had approved this route through Overton Park could not properly be given any weight by the Secretary in making his determination."

* * *

"In this connection, it should first be pointed out that the Supreme Court's interpretation of § 4(f) is con-

trary to what the Department of Transportation and its Secretary must have expected it to be. As we have already indicated, the Court has by its interpretation narrowly limited the choices of the Secretary. In doing so, as we have also already indicated, the Court gave no effect to the proviso in § 4(f) having to do with decisions by local officials. The Court further, in so construing the provision, expressly declined to accept the Secretary's argument that the requirement in § 4(f) that the alternative be a 'prudent' one allowed him to balance competing interests and to weigh the detriment to the park against the advantages of avoiding the park and then determine whether, on balance, the alternative route was a 'prudent' one. '(N)o such wide-ranging endeavor was intended.' 401 U.S. at 411. * * *

"There are other indications in the record that Secretary Volpe did not apply the correct standard. * * *

(p. 885)

"We conclude, then, that this case must be remanded to the Secretary of Transportation, but only for the purpose of making a route determination in compliance with § 4(f) of the Department of Transportation Act of 1966 as that provision has been construed by the Supreme Court." * * *

See also:

Harrisburg Coalition Against Ruin, Envir.
v. Volpe, 330 F.Supp. 918, 927-930
(M.D. Pennsylvania, 1971)

In conclusion, it is clear upon the basis of the record relied upon by defendants (see Affid. of Memmott, supra, pp. 21-22 and Exhs. cited therein) that neither the State of New York nor the Secretary of the Department of Transportation have complied with Section 4(f) of the Department of Transportation Act of 1966 as that provision has been construed by the Supreme Court (supra; Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402; Citizens to Preserve Overton Park, Inc. v. Volpe, 335 F.Supp. 873,

874, et seq., supra; Harrisburg Coalition Against Ruin. Envir.
v. Volpe, 330 F.Supp. 918, 927-930, supra).

In this connection, see also the Comments of the United States Department of the Interior, Dec. 6, 1971 (Exh. 54 to Affid. of Memmott, at pp. 1-2, 5, 8-9 of said Comments). In addition to the public access easements to Schenevus Creek (id., pp. 1, 5, 8-9) and the Richmondville Recreation Area (id., p. 8), reference to which as protected areas has been made by New York State, the Department of the Interior (id., p. 5) has also called attention to apparent 4(f) applicability to the recreation access road to Seward Lake and to school property available for recreational use. Factual issue on these points has been taken by the response of the New York State Department of Transportation in its letter of April 24, 1972, written by Mr. Memmott himself and also made a part of Exhibit 54 to his Affidavit, supra. See, also, Affidavit of LaBarca, October 24, 1972, A224-A226, A234, A237. It is respectfully urged, on the basis of the foregoing and of the following additional authorities either that there has not been compliance with the requirements of Section 4(f) of the Department of Transportation Act, 49 U.S.C., Section 1653(f), as amended, and Section 18(a) of the Federal-Aid Highway Act of 1968, 23 U.S.C., Section 138, or that there are genuine issues of material fact relating to such compliance requiring other than summary disposition thereof.

Louisiana Environmental Soc. v. Coleman
537 F.2d 79, 82-87 (5th Cir., 1976);

Monroe County Conservation Council v. Volpe
472 F.2d 693, 699-701 (2nd Cir., 1972);

Brooks v. Volpe, 350 F.Supp. 269, 280-282
(W.D. Wash., 1972), supp. 350 F.Supp. 287,
affd. 487 F.2d 1344 (9th Cir., 1973);

Named Ind. Mem. of San Antonio Con. Soc.
v. Texas Hy. Dept., 446 F.2d 1013, 1020-
1024, 1025-1027 (5th Cir., 1971).

POINT VIII

DEFENDANTS HAVE FAILED TO COMPLY WITH 23 U.S.C., SECTION 128, WITH REGARD TO THE HOLDING OF PUB- LIC HEARINGS.

Section 128 of Title 23 of the United States Code, relating to Highways, as amended by Public Law 90-495, Sec. 24, effective August 23, 1968 (82 Stat. 828), provides in part and insofar as here applicable, as follows:

"§ 128. Public hearings

"(a) Any State highway department which submits plans for a Federal-aid highway project involving the bypassing of, or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has offered the opportunity for such hearings, and has considered the economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Any State highway department which submits plans for an Interstate System project shall certify to the Secretary that it has had public hearings at a convenient location, or has afforded the opportunity for such hearings, for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed location of such highway. As amended Pub.L. 90-495, § 24, Aug. 23, 1968, 82 Stat. 828."

On the basis of the record, it appears that the State of New York, with the apparent approval of lower Federal officials, has followed a procedure with regard to the negotiated withdrawals of requests for public hearing that run counter to the purpose and

authority of 23 U.S.C., Section 128, with reference to public hearings, and of PPM 20-8, Para. 7, in implementation thereof (Affid. of LaBarca, Oct. 24, 1972, pp. 1-15, and Exhibits attached; A205-A240).

The courts, in implementing the Congressional mandate of public participation in the planning of such projects, have been sedulous in protecting public rights under the statute and in integrating the requirements of the National Environmental Policy Act with the public hearing requirements of Title 23 of the United States Code:

Lathan v. Brinegar, 506 F.2d 677, 689-690
(9th Cir., 1974);

D. C. Federation of Civic Associations, Inc.
v. Volpe, 434 F.2d 436, 440-443
(D.C. Cir., 1970);

City of Rye, New York v. Schuler
335 F.Supp. 17, 26-29
(S.D., N.Y., 1973);

Ward v. Ackroyd, 34 F.Supp. 1202, 1226-1227
(D. Md., 1972).

In light of the overall public purpose designed to be served by the requirement of hearings in this context, the parallels between what has happened in the cited segment (Affid. of LaBarca, supra, A205-A240), on the one hand, and what appears to have happened in at least four other segments of the proposed highway (id., A212), on the other hand, likewise in terms of withdrawn requests

for hearings and the subsequent nullification thereof, gives reason to believe that similar illegal procedures have been followed by the State with regard to other parts of the project, and raises genuine issues of material fact with respect thereto under the complaint.

Furthermore, the failure of the State to afford the opportunity for another public hearing in any case where locations are so changed from those presented in the notices or at a public hearing as to have a substantially different social, economic, and environmental effect, and the failure of the State highway department and division engineer to resolve the doubt, under the circumstances, in favor of a public hearing (Affid. of LaBarca, supra, A205-A206, A209, A215-A216, A217-A218; see also PPM 20-8, Para. "7.c." and "7.d.", A208-A209), are further to be considered by the Court with respect to the allegation (Complaint, Fourth Claim, A19-A21) that original hearings have not been held as required under Federal law, and that the State of New York has ignored or evaded the requirement of Federal law that such hearings be held.

POINT IX

DEFENDANTS HAVE ILLEGALLY APPROVED THE INCLUSION OF THE SUBJECT PROJECT AS PART OF THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS, FOR PURPOSES OF FUNDING AND, UNLESS RESTRAINED BY THE COURT, ARE PREPARED ILLEGALLY TO DISBURSE FEDERAL FUNDS IN CONNECTION THEREWITH AND IN VIOLATION OF LAW.

As it clearly appears from the facts, the actions of defendants in approving the inclusion of the subject project as part of the Interstate System were arbitrary and capricious and in excess of statutory authority (43 U.S.C., §103(e)(1), (3), A45; Federal-Aid Highway Act of 1968, P.L. 90-495, §14(B), A44-A45; 1968 U.S. Code Cong. and Adm. News, pp. 3535-3536, A46-A48; Affid. of Herbert A. Posner, Oct. 24, 1972, pp. 1-5, 9-16, A44-A48, A52-A58).

In National Forest Preservation Group v. Volpe, 359 F.Supp. 136 (D. Mont., Butte Div., 1973), involving the question of statutory authority for the construction of a Federal-aid primary highway, the court held that it had been improperly designated as such and was consequently ineligible for Federal construction funds. In particular, and insofar as here applicable, the court stated in part as follows (359 F.Supp., at p. 137, et seq.):

"The defendant, United States of America, having submitted a motion for reconsideration under Rule 59(e) of the Federal Rules of Civil Procedure, and briefs having been filed both in support of and in opposition to said motion, and the court having considered said motion and being fully advised, the court finds:

"That defendant has shown no meritorious reason why the court's original ruling (352 F.Supp. 123) should be altered or reversed. In its original judgment the court found that the proposed Lone Mountain Access Road had been improperly designated as a 'primary' route.

"Primary highways are described in § 103 as "connected main highways". 23 C.F.R. 1.6 describes them as "important city-to-city interstate and intrastate highways serving essentially through traffic." 352 F.Supp. 123 (1972). As of the date of the hearings on this proposed road, no permanent resident lived at its end. The proposed road connects a yet to be completed recreational resort area with potential investors and or customers. The proposed road does not expedite interstate commerce nor does it promote national defense. Admittedly, if the road and complex are completed, there will be considerable traffic and commerce. This, however, is not persuasive since it suggests that the road can create its own reason for being. The justification of the road should exist independently of the road rather than depending entirely upon its construction. Certainly the Federal Highway Administration can engage in long-term planning in anticipation of traffic; however, it is not free to ignore the strictures of 23 U.S.C. § 103 and build highways which have no independent justification.

(p. 138)

"Defendant urges in its brief that 23 U.S.C. § 143 (Economic Growth Center Development Highways) authorizes the inclusion of the proposed road in the Primary System regardless of whether the road meets the requirements of 23 U.S.C. § 103 (Federal Aid System). This contention is not borne out by the statute or the administrative interpretations. 23 U.S.C. § 143 uses the phrase 'on the federal-aid primary system' three times. This requirement was not included in the original House versions of the bill which were not passed. It is significant that the Conference versions which were ultimately passed did contain this conditional language.

* * *

"Part 4(d) of the Instructional Memorandum characterizes Economic Growth Center funds as a 'sweetener' to the regularly apportioned Federal-aid primary funds. The Growth Center funds constitute a 20% supplement to the Federal-aid primary funds. There are no provisions for expenditure of Growth Center Development funds independently of regularly apportioned Federal-aid primary projects."

* * *

Contra: Lange v. Brinegar, E.D. Wash., Civ. No. 3941, Aug. 31, 1976, pp. 3-10 (Interstate Classification).

On the basis of the record, defendants have illegally approved the inclusion of the subject project as part of the Interstate System, and its inclusion does not meet the criteria either originally established by Congress, or in connection with the particular 1,500-mile extension authorized in 1968. Unless restrained by the Court, defendants are prepared illegally to disburse Federal funds in connection therewith and to proceed with the illegal construction thereof, to the damage of plaintiffs, and in violation of the law.

Conclusion

The judgment below should be reversed; and appropriate relief granted to effect compliance with Federal law.

Respectfully submitted

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**COURT OF APPEALS
SECOND CIRCUIT**

77-6027

Capital Region Citizens Committee, et al.,

Index No.

Plaintiffs-Appellants,
against

John A. Volpe, et al.,

**ATTORNEY'S
AFFIRMATION OF SERVICE
BY MAIL**

Defendants-Appellees.

STATE OF NEW YORK, COUNTY OF Westchester

ss.:

The undersigned, attorney at law of the State of New York affirms: that deponent is

attorney(s) of record for

**Plaintiffs-Appellants Richmondville Property Owners Committee and New
York State Coalition for Safe Transportation**

*That on the 19th day of April, 19 77 deponent served the annexed
Brief of Plaintiffs-Appellants, The Richmondville Property Owners Com-
mittee, et al., on:*

**Carl Strass, Esq.
Department of Justice
Washington, D.C. 20530, and**

**Paul V. French, Esq.
United States Attorney
Northern District of New York
U.S. Court House and Post Office
Albany, New York 12207**

Attorneys for State Defendants-Appellees;

**Hon. Louis J. Lefkowitz
Attorney General
State of New York
The Capitol
Albany, New York 12224**

BEST COPY AVAILABLE

Attorney for Federal Defendants-Appellees.

*attorney(s) for the respective parties as above indicated
in this action at the respective addresses*

*the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care
and custody of the United States post office department within the State of New York.*

The undersigned affirms the foregoing statement to be true under the penalties of perjury.

Dated this 19th day of April 19 77.

William Hoppen
The name signed must be printed beneath

William Hoppen

Attorney at Law